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Elizabeth Gard

Rachel Goda

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# THE FIZZY EXPERIMENT: *SECOND LIFE*, VIRTUAL PROPERTY AND A 1L PROPERTY COURSE

Elizabeth Townsend Gard<sup>†</sup> and Rachel Goda<sup>††</sup>

## *Abstract*

*This work is an attempt to sort out the relationship between virtual property and common law property. How are we to understand the relationship between a “virtual” table and an actual table? What does property in this context mean exactly? While many have written about this topic from a myriad of perspectives, we took a slightly different approach. We wanted to see what property elements were being used inside one virtual space—Second Life. We sought to understand the relationship between common law property and virtual property by combining our knowledge—a property professor with a cultural history background with an avid gamer turned law student. We called it the Fizzy Experiment.*

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† Associate Professor, Tulane University School of Law. Ph.D., UCLA; JD/LL.M., University of Arizona. Thanks to Rachel Goda, who is the heart of the project. Thanks to Greg Lastowka, Roberta Kwall and James Gordley for comments on earlier versions of the paper. This work began at Seattle University School of Law, where the Fizzy Experiment was conducted while I was a visiting professor, 2006-07. Thanks specifically to Tyler Fox and Annette Clark for their support. And of course, thank you to Property A, who were all willing to spend at least ten hours investigating some aspect of *Second Life*. Portions of this paper began on Terra Nova, where Rachel and Elizabeth guest blogged in April 2007. We are also grateful to the invitations to discuss our project from Lauren Gelman, and the experience of appearing at the State of Play Academy. And thanks to the High Tech Symposium for their kindness and invitation to present our work. Thank you to Daniel Huebner (Director of Community Affairs at Linden Lab), who came as a guest class (through *Second Life*) to initiate our journey. Thank you also to Jason Archinaco, who appeared by conference call (and *not* in *Second Life*) as the finale of our course, and graciously discussed his ideas about virtual property and some of the aspects of the *Bragg v. Linden* case, then still in the midst of litigation; Jeffrey Dickey, a 1L student in the class for arranging the Archinaco visit; and of course, Eric Arnold, my research assistant at Tulane Law School, for not only his tireless searching, reading, and requests as I began the second phase of the project, but for bringing his own knowledge and thoughts to the project. Finally, thanks to K. who made us play *Webkinz* way too much, and to R. who was as always, willing to play.

†† Third year student, Seattle University School of Law. J.D. expected 2008; B.S., University of California, Berkeley, Walter Haas School of Business. Former Linden Lab employee, Chadrick Baker, helped me with all the technical problems and issues I had in *Second Life* throughout the project.

If platform owners encourage real world commodification of virtual worlds, encourage people in these worlds to treat virtual items like property, and allow sale and purchase of these assets as if they were property, they should not be surprised if courts, legislatures, and administrative agencies start treating virtual items as property. Indeed, the more activities in virtual worlds affect real world commerce and real world property interests, the more quickly virtual worlds will become targets of legal regulation.<sup>1</sup>

—Jack Balkin, *Law and Liberty in Virtual Worlds*

To the extent that virtual property shares the legally relevant characteristics of real world property, it is not a stretch to state that common law property values may have valuable insights to contribute to the regulation and protection of online use rights.<sup>2</sup>

—Joshua A. T. Fairfield, *Virtual Property*

## I. THE FIZZY EXPERIMENT<sup>3</sup>

In many ways, the Fizzy Experiment sought to test the veracity of Fairfield's statement about the relationship between the values of common law property and virtual property by investigating (in a very primitive way) what elements of a traditional 1L property class were readily found in *Second Life*. *Second Life* is a virtual world that has caught the attention of many in recent years, in part because of its branching out from the traditional gaming model of Massively Multiplayer Online Role Playing Games (MMORGs) to a broader, more market-economy based approach—a virtual world rather than a virtual game.<sup>4</sup> People buy and sell almost everything—houses, property, body parts, labor, sex.<sup>5</sup> We began our experiment just as universities,<sup>6</sup> businesses,<sup>7</sup> governments,<sup>8</sup> and significant money

1. Jack M. Balkin, *Law and Liberty in Virtual Worlds*, 49 N.Y.L. SCH. L. REV. 63, 78 (2004).

2. Joshua A.T. Fairfield, *Virtual Property*, 85 B.U. L. REV. 1047, 1090 (2005).

3. Because Elizabeth and Rachel come from significantly different perspectives, we have noted when Rachel is writing, and when Elizabeth is writing. Each author's contribution is noted in footnotes preceding each section. Part I is authored by Elizabeth Townsend Gard.

4. See Wikipedia, *Second Life*, [http://en.wikipedia.org/wiki/Second\\_life](http://en.wikipedia.org/wiki/Second_life) (as of Apr. 17, 2008, 17:15 GMT).

5. See, *id.*; Wikipedia, *Economy of Second Life*, [http://en.wikipedia.org/wiki/Economy\\_of\\_Second\\_Life](http://en.wikipedia.org/wiki/Economy_of_Second_Life) (as of Mar. 18, 2008, 16:32 GMT).

6. Examples of such universities who started a significant money flow into *Second Life* in the Spring of 2007 include Santa Clara University. See Press Release, Santa Clara University, Santa Clara University enters *Second Life* (Nov. 12, 2007),

started to flow into *Second Life*. The news media also became interested. Suddenly, *Second Life* was a phenomenon.

The project started out with a simple question, really. What connections could we find to what 1L property students learn with the concept of virtual property and contemporary issues surrounding *Second Life*? We sought to investigate how virtual property operated in *Second Life* as a learning tool for 1L students to apply and analyze basic concepts like easements, finders and adverse possession. And so, the Fizzy Experiment was born, so to speak, in the spring of 2007. Together, Rachel Goda, a 2L student at Seattle and I, a property law professor, decided to take one hundred 1L property students into *Second Life* and create screencasts of what they were able to discover.<sup>9</sup> It was a leap of faith that we could get each student technologically advanced enough to be able to investigate fully the assigned specific topic. It was also a leap of faith that they would find enough on each topic to make it worthwhile. Finally, it was a leap of faith that these 1L students would be willing (if they ever realized they had a choice) to incorporate *Second Life* into their 1L property

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<http://www.scu.edu/news/releases/release.cfm?month=1107&story=Second-Life> (last visited Mar. 26, 2008).

7. Examples of such businesses who started a significant money flow into *Second Life* in the Spring of 2007 include: AOL, Toyota, H&R Block, American Apparel, Reebok, Sun Microsystems, GM/Pontiac, Adidas, Sears, IBM, Dell, to name a few. See Michael Fitzgerald, *Does Your Business Need a Second Life?*, INC. MAG., Feb. 2007, available at <http://www.inc.com/magazine/20070201/hidi-rosedale-sidebar-business.html>. See also Posting of Jeff Bartlett to BlogsCars, Scion encourages us to get a Second Life, [http://blogs.consumerreports.org/cars/2007/01/scion\\_encourage.html](http://blogs.consumerreports.org/cars/2007/01/scion_encourage.html) (Jan. 29, 2007, 1:45:23 PM).

8. The House of Sweden opened in February 2007. "Sweden will be the first country to open a virtual embassy in *Second Life*. It will be called House of Sweden, and be modeled on the country's new embassy in Washington." SARA HIXSON, GROUP 4: NEWS (April 16, 2007) (on file with author). See also News24.com, Cyberspace embassy for Sweden (Jan. 30, 2007), [http://www.news24.com/News24/World/News/0,9294,2-10-1462\\_2061977,00.html](http://www.news24.com/News24/World/News/0,9294,2-10-1462_2061977,00.html). During Spring 2007 we also saw

the unveiling of 'Capitol Hill Island' by U.S. Congress Representative George Miller from 7th district of California. The island was developed by a Berkeley-based marketing company, Clear Ink, which even has a portion of their company dedicated to marketing products within second life exclusively. The island has a mock House of Representatives and issues pavilions with links to information about such topics as stem-cell research and immigration. Representative Miller hopes that other politicians will join him in Second Life to engage in debates within a world forum. However, when I visited Capitol Hill with Fizzy, I was the only avatar there the entire time.

Anna Cashman, News Reporting inside Second Life by Anna Cashman (March 20, 2007) (on file with the author).

9. Screencasts are Powerpoint presentations recorded with audio. These are available for viewing at <http://fizzy.blip.tv>.

experience, not something traditionally included in this basic class, and definitely (at least not at the moment) not something that would appear on the bar.<sup>10</sup> (They were!)

We studied modern property law three days a week for a full school year. We would be deeply entrenched in problems of contemporary property law, but our casebook—our traditions—always make us aware that we are a product of our British feudal past. That is the paradigm that many over the years have taught first year property law. *Second Life* presented a new opportunity. Now, I proposed to teach property within the context of three phases: a feudal British past, a contemporary traditional property context, and the future as embodied in worlds like *Second Life* and the concept of “virtual” property.

What can our past teach our present, and our present teach our future? What elements of property are being translated into Locke’s new “America?”<sup>11</sup> Will places like *Second Life* feel the burden to continue traditions from feudalism or is it a blank slate, where code becomes law,<sup>12</sup> where the world is based on contract rather than property law, or where only intellectual property law rather than real or personal property matters? By placing the class into the paradigm of feudal, modern and virtual, I hoped to give the students an opportunity to evaluate, apply, and analyze the concepts they were learning in their property class in a new environment.<sup>13</sup> I also wanted students to think about new challenges *Second Life* faces that traditional property does not. What role does technology play in regulating conduct and concerns? These were a few of the initial basic ideas and questions.

This paper documents our experiment, that moment—how the experiment was conducted, some of what the students found, and

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10. 1Ls are a little obsessed sometimes with wondering whether something will be on the bar exam, three years in the future. It seems to be more a point of (misplaced) anxiety, but nevertheless can often drive them to a frenzy. We had many reassuring words to them that this would not put them in a worse position than their fellow classmates. In fact, this was much more like a simulation or an application of the materials, and (we argued) would help them better understand the basic concepts that *would* be included in a property question on the bar.

11. Our case book begins with the quote “Thus in the beginning all the world was *America*.” JESSE DUKEMINIER ET AL., PROPERTY 3 (6th ed. 2006) (quoting JOHN LOCKE, TWO TREATISES OF GOVERNMENT, Book II, Ch. V. (1690)).

12. See LAWRENCE LESSIG, CODE VERSION 2.0 (2006).

13. I especially wanted the students to be able to apply concepts learned their Fall semester during the Spring semester. The Fall types included first possession, subsequent possessio, estates and future interests, co-ownership, and marital interests. The Second semester included landlord-tenant, nuisance, covenants, zoning and eminent domain.

what kind of questions we found ourselves asking at the end of that first semester. Part II traces the gestation of Fizzy—how the project was conceived and the structure we decided upon. Part III looks at the mechanics of the project—what it took to get one hundred 1L property students into *Second Life*. Part IV summarizes some of the students' findings, using the students own words and observations. Part V concludes with suggestions on where the project may go in the future—what questions we found ourselves asking as the first phase of the project ended, and the potential directions we might each/together take our research in the future.

And finally, I want to make a disclaimer. This is in many ways an intentionally naïve project. The students were given a few law review articles on virtual property,<sup>14</sup> and we had discussions about the kinds of questions, the kinds of news stories that were being discussed particularly with regard to *Second Life*. We also had Daniel Huebner (Director of Community Affairs at Linden Lab) come to our class virtually on the first day in January as a kick-off to the project,<sup>15</sup> bookmarked at the end of the semester with a conference call with Jason Archinaco (attorney for Bragg in the then virtual property case against Linden Lab).<sup>16</sup> But other than that, we wanted the students to take their limited knowledge of property and pair it with their limited knowledge of *Second Life*. The screencasts of their journeys make connections between their law school course and a new environment, where they try to apply basic concepts to a new situation. How does one measure success in this situation? They all seemed to work very hard and take the exercise seriously. And, we think, they actually learned a little bit. That is enough for us, at least for now.

## II. THE REASON FOR FIZZY

Rachel and Elizabeth each had reasons for being interested in devoting time to a project concerning and occurring in *Second Life*, which guided how the project was structured in many ways. It is also important to note that from the beginning, we saw ourselves as a team, rather than as a professor and an assistant. We designed the

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14. The students were assigned F. Gregory Lastowka & Dan Hunter, *The Laws of Virtual Worlds*, 92 CAL. L. REV. 1 (2004) [hereinafter Lastowka & Hunter, *The Laws of Virtual Worlds*] and Joshua A.T. Fairfield, *Virtual Property*, 85 B.U. L. REV. 1047 (2005). Other work that deeply influenced my thinking about the project, but which the students did not read, include F. Gregory Lastowka & Dan Hunter, *Virtual Crimes*, 49 N.Y.L. SCH. L. REV. 293 (2004).

15. Special thanks goes to Rachel Goda for arranging this speaker.

16. Special thanks to Jeffrey Dickey, a 1L student in the course, for arranging this speaker.

project together, and we each had specific tasks and obligations when it came to executing our goals. Below we have described how each of us came to the project, because this very much formed the structure and goals of what we set out to accomplish.

A. *Elizabeth's Reasons: Applying Raymond Williams and Michel Foucault to Modern and Virtual Property*<sup>17</sup>

Could there be a place for teaching virtual property within the context of a basic property law course? Would this help the students, in some way, better understand the concepts of property by having to struggle in a *Brave New World*?<sup>18</sup>

In visioning property as feudal, modern and virtual, I saw an opportunity to explore Raymond Williams' concepts<sup>19</sup> of what constitutes culture and how culture changes, along with Foucault's concept *epistemes*,<sup>20</sup> in the context of teaching property law. Raymond Williams (1921-1988) and Michel Foucault are two leading cultural theorists (1926-1984) whose works help us to see how culture is formed and reformed, and what power relationships are in operation in the process. By applying some of their key concepts, we would search to see if we saw intermingling competing hegemonies, and also we would look to see if we could conduct a limited archeological investigation into the moment of Spring 2007, searching for the layers of culture known as property law.

Williams describes the cultural process as consisting of three elements: traditions, institutions and formations.<sup>21</sup> He describes traditions as "the most actively shaping force," for "tradition is the most evident expression of the dominant and hegemonic pressures and limits."<sup>22</sup> Could we see the traditions of modern property at play when people conceived of virtual property in *Second Life*? Williams describes the process of *selective tradition*: "an intentionally selective version of a shaping past and a pre-shaped present, which is then powerfully operative in the process of social and cultural definition

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17. Part II.A is authored by Elizabeth Townsend Gard.

18. Aldous Huxley's *Brave New World* is a futuristic novel in which society has reached a stage of production that it is necessary as a social responsibility for people to consume in order to maintain the well-being of society. So, middle-class and above are ethically driven to consume as much as they can. ALDOUS HUXLEY, *BRAVE NEW WORLD* (Bantam Books 1958) (1932).

19. See generally RAYMOND WILLIAMS, *MARXISM AND LITERATURE* (1977).

20. See generally, MICHEL FOUCAULT, *THE ORDER OF THINGS* (1966).

21. WILLIAMS, *supra* note 19, at 115.

22. *Id.*

and identification.”<sup>23</sup> He explains, “It is a version of the past which is intended to connect with and ratify the present. What it offers is a sense of predisposed continuity.”<sup>24</sup> What parts of property were being appropriated as predisposed? What parts of the tradition of property were being discarded as unnecessary? For, in the words of Williams, “a deliberately selective and connecting process offers a historical and cultural ratification of a contemporary order.”<sup>25</sup>

Institutions are the second concept that contributes to the cultural process, where he defines cultural, political and institutional institutions as being very complex.<sup>26</sup> I wanted to see what kinds of institutions were being formed in *Second Life*, and whether again, the traditions of modern property law were informing choices and decisions. This leads to Williams third category in the cultural process—formations, which Williams defines as “those effective movements and tendencies, in intellectual and artistic life, which have significant and sometimes decisive influence on the active development of a culture, and which have a variable and often oblique relation to formal institutions.”<sup>27</sup> Obviously in looking at a space such as *Second Life*, one can see the immediate usefulness of Williams categories of cultural process.

A second set of concepts key in my thinking concerned the relationship of feudal, modern, and virtual property. Again, Williams’ might prove useful in sorting out our use of history, and virtual property’s use or rejection of modern property concepts. Williams uses the terms “residual,” “dominant,” and “emergent” to explain how culture changes. Williams defines “residual” as something that has been “effectively formed in the past, but it is still active in the cultural process, not only and often not at all as an element of the past, but as an effective element of the present.”<sup>28</sup> This could describe much of what the first year property work is founded—cases from 1600, 1700, and discussions why a fee tail began or how nuisance came before zoning as way for us to understand the present. Williams writes:

[A] residual cultural element is usually at some distance from the effective dominant culture, but some part of it, some version of it—and especially if the residue is from some major area of the

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23. *Id.*

24. *Id.* at 116.

25. *Id.*

26. *Id.* at 117.

27. WILLIAMS, *supra* note 19, at 116.

28. *Id.* at 122.



past—will in most cases have had to be incorporated if the effective dominant culture is to make sense in these areas.<sup>29</sup>

Is there any other way to describe why 1L students learn some basic history of feudalism property law or why courses begin with *Pierson v. Post*? These are residual cultural elements that the dominant culture believes help us to make sense of our present. In many ways, one could see Williams describing legal precedent and the case method in similar terms.

“Emergent” is more difficult to define. Williams explains:

What matters, finally, in understanding emergent culture, as distinct from both the dominant and the residual is that it is never only a matter of immediate practice; indeed it depends crucially on finding new forms or adaptations of forms. Again and again what we have to observe is in effect a pre-emergence, active and pressing but not yet fully articulated, rather than the evident emergence which could be more confidently named.<sup>30</sup>

Again, I saw this distinct relationship occurring within property law. Could *Second Life* be a pre-emergent stage of a new genre or property? Could we see “residual” elements of the dominant culture of modern property within *Second Life*? Finally, widening the lens, could we see feudalism as the residual culture within the dominant modern property system, followed by a pre-emergent or emergent culture in the form of virtual property?

I also was thinking about, in only the most minimal way, some of the most basic structural concepts of Foucault. Following on the idea of Williams’ emergent culture, I wanted to explore whether looking at virtual property within the context of teaching property law could be seen as distinct moments—snapshots of property law or our vision of what property law is at this moment. What did property look like in *Second Life* in the Spring of 2007? How does that compare to what we thought of as modern property in a 1L class in the Spring of 2007? Foucault’s *epistemes* help us to understand the *order of things*.<sup>31</sup> David Shumway, a Foucault scholar, explains:

Each *episteme* is like a stratum of earth in which the artifacts uncovered are the products of a distant historical period. We know this not just by their proximity, but also by their character, which shows their relationship to each other and to the whole. But just as

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29. *Id.* at 123.

30. *Id.* at 126.

31. MICHEL FOUCAULT, *THE ORDER OF THINGS: AN ARCHAEOLOGY OF THE HUMAN SCIENCES* XX (1970).

the different strata of earth at a dig site tell us little about why one civilization vanished and another began, so the analysis of *epistemes* tell us nothing about the change from one to another. The archaeologist merely observes that the change has occurred at a certain historical moment.

Nevertheless, an archeologist will find objects that resemble each other from stratum to stratum. His excavations would be meaningless if this were not the case since he could not recognize, classify, and compare what was uncovered.<sup>32</sup>

Our project, in many ways, mimicked this notion of archeology. With our limited knowledge of feudalism as compared to modern property, we now were going to look at the latest stratum, an example of virtual property in the form of going inside *Second Life*. In many ways, I conceived of the project as looking for comparative objects—in our case legal concepts of property—to analyze whether virtual property was merely a continuation of a modern property system, or could potentially be the beginning of something new. I wanted to try to understand the general shape of virtual property in *Second Life* as compared to the general shape of modern property as it is taught to 1L students.<sup>33</sup>

Foucault began also in a Marxist vein in his early theorizing where means of production is very much determinative of the kind of cultural consciousness that arises. He looked at an agrarian phase, a capitalist/industrial phase, and a late-capital-what's that giving over to phase. His notable work focuses on not seeing these as teleological, where there is no naturally progressing order from one to the next. There is no reason that society moves from agrarianism to capitalism. He sets them side-by-side rather than as a nature progression. He sees ruptures—one organization of culture and then another. So, his work mirrors that. Do we see these ruptures from modern property to virtual property? Is virtual property a rupture? What authenticates the order of the episteme changes. What changes can we see occurring in *Second Life*?

On a less theoretical plane, then, the question was the relationship between our present—the dominant modern culture and the emergent virtual culture. It was also the relationship of the larger

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32. DAVID R. SHUMWAY, MICHEL FOUCAULT 56 (1989).

33. Foucault argues "that the general shape of order in a given culture is more fundamental than either its empirical ordering or its theoretical reflection upon order." *Id.* at 58. Empirical ordering is the "fundamental codes of a culture." *Id.* Scientific theories and philosophies "explain and justify the order." *Id.* (referring to FOUCAULT, *supra* note 31, at xx).

historical periods. How are we to interpret the historical line of property? We came from a feudal past, we are in the dominant space of modern property, and in front of us stands the possibility of the emergent culture of virtual property. Could we, a 1L class, explore what possible concepts of modern property a virtual property community might borrow to assist in developing an emergent culture? Alternatively, are we witnessing a rupture into a new episteme? How do the artifacts of the moment—of the spring of 2007—serve as examples of the dynamics of discourse of what is property and what is virtual property? So, we followed Foucault's path—an ungrounded journey—of discourse inherently embodies a kind of playing out of authority.

The second reason for making the decision to include *Second Life* into my 1L property course came from an event. In August 2006, I attended the IPSC Conference at Berkeley.<sup>34</sup> On the panel, Tyler Ochoa talked about the rights of Avatars, including avatars in *Second Life*.<sup>35</sup> A Boalt law student from the audience asked, "but what about the virtual property itself? How are we to understand the ownership and meaning of what virtual property is?"<sup>36</sup> It was exactly what I was thinking. How were residents in *Second Life* viewing or perceiving their virtual tables, land, and other objects of their virtual lives? While the virtual lamp was obviously protected by copyright law, I wanted to go beyond this. Did people perceive the boat they were giving to a friend as a copyrighted work depicting a boat or as a boat itself? Could property laws, rather than copyright, help us to understand the relationships within *Second Life*?<sup>37</sup>

A hurdle I would soon discover was that many believed a property analysis unnecessary, not merely because copyright covered the code of the objects and avatars, but because *Second Life*, like other virtual worlds, are governed by contract.<sup>38</sup> From the beginning, I

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34. Intellectual Property Scholars Conference, University of California, Aug. 9-10, 2006. <http://www.law.berkeley.edu/institutes/bclt/ipsc/schedule.html> (last visited Feb. 23, 2008).

35. Tyler Ochoa, Who Owns an Avatar? Assessing Claims of Copyright Ownership in Virtual Worlds, <http://www.law.berkeley.edu/institutes/bclt/ipsc/papers2/Ochoa.doc> (last visited Apr. 21, 2008).

36. This is Elizabeth's reconstruction of the student's question. This student actually authored a note: Bobby Glushko, *Tales of the (Virtual) City: Governing Property Disputes in Virtual Worlds*, 22 BERKELEY TECH. L.J. 507 (2007).

37. Now of course, there are many brilliant scholars working on and theorizing about virtual property. See, e.g., Fairfield, *supra* note 2.

38. See, e.g., Jacob Rogers, *A Passive Approach to Regulation of Virtual Worlds*, 76 GEO. WASH. L. REV. 405 (2008) (governing virtual worlds by contract avoids use of inapt metaphors to define the problem and imports well-settled interpretation principles). See also

refused to make this an impediment of the experiment. I wanted to know how much the objects and avatars themselves acted within a property-like environment, and not the actual *legal* constructions at the moment.

And then the third and most important event occurred: Rachel Goda. Rachel was a 2L student who at the time was taking my Intellectual Property survey course. I had asked the class if anyone had an interest or knowledge of *Second Life*, and she came up after class to say, indeed she did. We began talking—about her experiences in gaming and my potential research questions about *Second Life*. I told her my idea—to incorporate *Second Life* into the second half of the basic property class. She said she was very familiar with other Massively Multiplayer Online Role Playing Games (MMORPGs), but had not explored *Second Life*. It would give her the opportunity for more serious investigation. Over the next few weeks, we started to design what would later be the Fizzy Experiment.

### *B. Rachel's Background and Questions*<sup>39</sup>

“After obtaining five arcane rings, Anya rushed back to the Lord Nagafen in the Solesek Eye to deliver the mystical rings and received a final mission from him to defeat Darather, the dragon residing in the Isle of Refuge. By dawn, Darather was defeated by the hands of her allies, twenty-four of the best fighters and healers in the land of Norrath.”

This is a fascinating virtual life of my avatar, a level 70 wizard, in EverQuest II,<sup>40</sup> a massively multiplayer role-playing game (“MMORPG”).<sup>41</sup> I was once one of the first twenty-four players (members of my fellow guild, *Nerfed*), who completed the end-game of EverQuest II and were rewarded with the rarest artifact at that time, the Prismatic Rod of Scale, on the Oggok server. In the real world, I am a third year law student, who passionately studies online games and virtual worlds, and the surrounding legal issues.

It was when I was discussing with Professor Townsend Gard my interest in the game industry that she first asked me to be a part of this

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Glushko, *supra* note 36 (advocating modification of EULAs to reflect player's expectations of property rights in virtual goods).

39. Part II.B authored by Rachel Goda.

40. See Wikipedia, *EverQuest II*, [http://en.wikipedia.org/wiki/EverQuest\\_II](http://en.wikipedia.org/wiki/EverQuest_II) (as of Apr. 15, 2008, 17:00 GMT).

41. A genre of online computer role-playing games in which a large number of players interact with one another in a virtual world. See Wikipedia, *Massively multiplayer online role-playing game*, <http://en.wikipedia.org/wiki/MMORPG> (as of Apr. 15, 2008, 23:47 GMT).

amazing *Second Life* project in her first year property course. I was intrigued by the idea of taking a 1L property class into *Second Life* both as an ex-gamer and as a law student. As an ex-gamer, the property rights issue in MMORPGs had been an area of my strong interest. And as a law student, I believed that we are about to face a new digital age, as we have once seen when Internet and World Wide Web was introduced and changed our lives, the 3-D virtual environment like *Second Life* will be a common place to commerce, communicate, and socialize for many of us in the future.

The growing popularity of MMOPRGs had already brought the issue of ownership rights in virtual worlds, and the appropriateness of what was called "real money transfer ('RMT') into an increasingly public light. RMT occurs when a person sells a virtual world asset, such as World of Warcraft gold,<sup>42</sup> for real money. Blizzard Entertainment ("Blizzard"), a developer of the online game World of Warcraft,<sup>43</sup> claimed all the data on the World of Warcraft service was the property of Blizzard and restricted the in-world property trading outside of the game as well as RMT. Still, third party online sites have allowed the trading and RMT to take place. Some say the secondary market revenues could range somewhere between \$540 million and \$880 million world wide.<sup>44</sup> This number is too large to simply ignore and say, "Players cheat." Should we do something about this?

As an ex-MMORPG player, I personally witnessed how hard players work to collect rare virtual items and virtual currency. Players would spend hours to level up their characters and customize them with level-specific armors, weapons, and other accessories to boost his or her power. Players generally have a few options to obtain these items in-world: crafting, purchasing from others either directly or through auctions (certain items for lower level players are also available at in-world shops), or receiving a reward by killing a monster (a computer made target). Popular virtual items are difficult to find through these methods in-world, and hence players often seek easier ways to obtain these items, for example, through RMT.

One time, a player in EverQuest II offered me six hundred dollars for my Prismatic Rod of Scale because the item was extremely

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42. A virtual currency used in World of Warcraft called "gold."

43. A massively multiplayer online game known as "WoW." See Wikipedia, *World of Warcraft*, [http://en.wikipedia.org/wiki/World\\_of\\_Warcraft](http://en.wikipedia.org/wiki/World_of_Warcraft) (as of Apr. 18, 2008, 18:08 GMT).

44. Posting of Julian Dibbell to Terra Nova Blogs, *Recalculating the Global Virtual GDP, Yet Again*, [http://terranova.blogs.com/terra\\_nova/2007/06/recalculating-t.html](http://terranova.blogs.com/terra_nova/2007/06/recalculating-t.html) (June 26, 2007).

rare at that time. If I sold it, it would have been a violation of the terms of service agreement with Sony Online Entertainment, a developer of EverQuest II.<sup>45</sup> Then, I could not help thinking that this was such a strange concept of ownership. As a dedicated player of EveryQuest II, I felt so strongly that I “earned” the item and thus owned it. But, the peculiar ownership only existed in the world of EverQuest II. Or, perhaps, even the use of word “ownership” is incorrect because, according to the terms of service, I did not own anything. Is this just?

After coming to law school, I was seeking for an opportunity to explore the concept of virtual property. And as mentioned above, the opportunity came to me when I took the intellectual property survey course Elizabeth taught at Seattle University. Without any hesitation, I offered to assist Elizabeth with the Fizzy Experiment in *Second Life*.

The introduction of *Second Life* has taken the property issues in MMORPGs to a whole new level by granting ownership rights to players for their in-world creations. Further, this attempt, blurring the distinction between the real world and fantasy world, also forced us to re-evaluate fundamentals of individual rights. Now, legal issues debated over the virtual world are not limited to property ownership rights but also extend to constitutional rights (e.g., First Amendment), torts (e.g., defamation), intellectual property rights infringement, criminal behaviors (e.g. gambling, child pornography), and even in the area of taxation. We have experienced similar challenges when the Internet and World Wide Web were first introduced. As I was exploring the potential of virtual world, I strongly felt that to encounter a new digital age, we needed to be better prepared. Innovative businesses and educators have already integrated a virtual world as a venue of business and education.<sup>46</sup> But, courts and laws are notorious for being slow in catching up with new technologies. Don't law students deserve an opportunity to familiarize themselves with this new environment and to understand unique legal implications it creates if they were expected to encounter these issues in the future? I believed that the project would not only satisfy my personal curiosity but would simultaneously provide students a fantastic

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45. Sony Online Entertainment, EverQuestII User Agreement and Software License, [http://help.station.sony.com/cgi-bin/soe.cfg/php/enduser/std\\_adp.php?p\\_faaid=12248](http://help.station.sony.com/cgi-bin/soe.cfg/php/enduser/std_adp.php?p_faaid=12248) (last visited Mar. 24, 2008).

46. Examples include: Adidas, Coca-Cola, Cisco Systems, Calvin Klein, BMW, Harvard University, Brown University, New York University.

opportunity to peek at the complex virtual world legal issues in a virtual world.

### III. THE MECHANICS OF FIZZY<sup>47</sup>

How do we regulate a world of texts? What laws will be best for [the] stories of cyberspace?<sup>48</sup>

—David Post

The imagined project took many forms over the Fall semester of 2006. We thought of having each student create an avatar. We thought of groups that would work with an avatar over the semester and interact with each other. We came, however, to choose a very different model. We had one avatar we called Fizzy Soderberg. We would have a pet hamster, so to speak, whose journey we would follow through the semester. We divided the class into thirteen groups of seven to nine students each. Each group would be given one week to explore *Second Life* with Fizzy, gather the latest news, and most importantly, research a key concept in property law. At the end of the week, the students recorded a screencasting in my office. The PowerPoint was prepared by the self-appointed group leader. Each student creates their own portion of the script.

Fizzy was the name the first group came up with for our group avatar (something that was against the rules in *Second Life*, always a good way to begin with one hundred property students). We followed Fizzy's journey, with each new group passing Fizzy along. I wanted a common narrative, something that brought the class together. We were all a little bit Fizzy. But even in creating this communal avatar, I quickly had questions from a number of students of "Who gets to own Fizzy after the semester." With only 10-20 hours invested in Fizzy, some felt an ownership stake. They also, for some reason, thought Fizzy could potentially make "millions"—I'm not sure why, as Fizzy didn't do very much. But, because of the atmosphere they found themselves, they wanted their cut.

I met with each group twice a week for an hour to help them complete their property research assignments in *Second Life*.<sup>49</sup> Considering that each group received only one week to research their assigned topic, efficiency was undoubtedly a key to success for both

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47. Part III, paras. 1 and 2, authored by Elizabeth Townsend Gard.

48. David G. Post, "The Free Use of our Faculties": Thomas Jefferson, Cyberspace and the Language of Social Life, 49 *DRAKE L. REV.* 407, 410 (2001).

49. Part III, paras. 3-13, authored by Rachel Goda.

the students and myself. Therefore, in the first meeting, I focused the discussion primarily on three areas: (1) the in-world rules and mechanism of *Second Life*; (2) certain aspects of the *Second Life* Terms of Service (“TOS”) and the relevant language; and (3) useful tools and functions to operate within *Second Life*.

I believed, in order for students to gain a concept of (virtual) property within *Second Life*, it was crucial that they entered *Second Life* understanding the in-world mechanism specific to *Second Life*, which is different from more widely known 3-D worlds like MMORPGs.<sup>50</sup> Thus, I tried to address this aspect often by making a comparison between *Second Life* and a traditional MMORPG.

*Second Life* provides a mixture of fantasy and reality in a 3-D world that resembles online games like The Sims or World of Warcraft. Although, it is often referred to as a game, *Second Life* does not have points, scores, winners or losers, levels, an end-strategy, or most of the other characteristics of online games. *Second Life* has stores, beaches, golf courses, ski resorts, high-rise office buildings, hospitals, medieval role-playing regions, clubs, and bars. Unlike in typical online games where the environment is usually created by the developer, most of the assets in *Second Life* are created by its users, so called “Residents.”<sup>51</sup> Because Residents retain the rights to their digital creations, they can buy, sell, and trade with other Residents.<sup>52</sup> Residents can also own virtual land and freely buy, sell, or rent to other Residents.<sup>53</sup> This commerce is handled with the in-world unit-of-trade, the Linden dollar, which can be converted to US dollars.<sup>54</sup> It is this practice that is blurring the distinction between the virtual world and real world market place and is leading us to an ultimate question: “What kind of ownership rights do we really have in the virtual world?”

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50. Whether *Second Life* is a game or not has been debated. In the famous virtual property case, *Bragg v Linden Research, Inc.*, *Second Life* is defined as a MMORPG in the plaintiff's complaint. Plaintiff's Complaint in Civil Action at 2, *Bragg v. Linden Research, Inc.*, 487 F. Supp 2d 593 (E.D. Pa 2007) (No. 06-cv-04295). However, the general public does not seem to consider *Second Life* as a game. See David Kirkpatrick, *Second Life: It's not a game*, FORTUNE, Jan. 23, 2007, available at [http://money.cnn.com/2007/01/22/magazines/fortune/whatsnext\\_secondlife.fortune/index.htm](http://money.cnn.com/2007/01/22/magazines/fortune/whatsnext_secondlife.fortune/index.htm).

51. Secondlife.com, What is Second Life?, <http://secondlife.com/whatis/> (last visited Mar. 24, 2008).

52. *Id.*

53. *Id.*

54. *Id.*



After introducing this question, I briefly directed students to the language of the Terms of Service (TOS)<sup>55</sup> so that the students could examine how the contract protected and restricted virtual ownership rights granted to Residents. The TOS grants ownership rights of Residents as follows:

Users of the Service can create Content on Linden Lab's servers in various forms. Linden Lab acknowledges and agrees that, subject to the terms and conditions of this Agreement, you will retain any and all applicable copyright and other intellectual property rights with respect to any Content you create using the Service, to the extent you have such rights under applicable law.<sup>56</sup>

However, the TOS also provides a provision that limits previously given Residents' ownership rights:

When using the Service, you may accumulate Content, Currency, objects, items, scripts, equipment, or other value or status indicators that reside as data on Linden Lab's servers. THESE DATA, AND ANY OTHER DATA, ACCOUNT HISTORY AND ACCOUNT NAMES RESIDING ON LINDEN LAB'S SERVERS, MAY BE DELETED, ALTERED, MOVED OR TRANSFERRED AT ANY TIME FOR ANY REASON IN LINDEN LAB'S SOLE DISCRETION.<sup>57</sup>

Although the use of online terms of service to define their legal relationships with subscribers is a common characteristic of all MMORPG businesses, this contractual structure of ownership is unique to *Second Life*. It is often a standard industry practice that a developer retains ownership rights over the in-world assets. For example, Blizzard provides in its terms of use:

All rights and title in and to the Program and the Service (including without limitation any user accounts, titles, computer code, themes, objects, characters, character names, stories, dialogue, catch phrases, locations, concepts, artwork, animations, sounds, musical compositions, audio-visual effects, methods of operation, moral rights, any related documentation, "applets" incorporated into the Program, transcripts of the chat rooms, character profile information, recordings of games played on the Program, and the

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55. Secondlife.com, Terms of Service, <http://secondlife.com/corporate/tos.php> (last visited Mar. 24, 2008).

56. *Id.* § 3.2.

57. *Id.* § 5.3.

Program client and server software) are owned by Blizzard or its licensors.<sup>58</sup>

Players of World of Warcraft have no right or title in or to any content, including virtual goods and currency; and thus, any virtual property transfer executed outside of the game for “real money” or items would be considered as a violation of these terms.

I introduced these two different contractual relationships in order to highlight reasons why virtual property issues in *Second Life* had been controversial and vigorously debated. In addition, while avoiding to overemphasize that *Second Life* was fundamentally contract based, I wanted students to explore *Second Life* with an open mind, knowing that the phrase “virtual property” could have much more complex legal implications than one might assume. In the provisions of the TOS, it only guarantees intellectual property rights of Residents.<sup>59</sup> While the 3-D interactive environment is creating a perception of (virtual) personal property and (virtual) real property, the TOS only recognizes intangible property ownership of assets in *Second Life*, not the traditional property concept. But, does this mean that there are no tangible property concepts in *Second Life*? It was important to me that students were aware of the potential risk of applying property laws traditionally based in real property to the online digital environment.

The last goal of the first meeting was to teach students basic functions of *Second Life*: how to move their avatar, how to take screenshots, how to change avatar appearance, how to find locations and events in-world, and how to store and retrieve items in Fizzy’s inventory. I demonstrated these functions in a classroom using a big projector screen. At this stage, however, I tried to keep the information to the necessary minimum so that the students would not feel overwhelmed or confused. Additionally, I listed several website links for students, where they could look up information on *Second Life*. I generally emphasized, however, that students should contact me in case they have a problem or question, and that they should not spend too much time in *Second Life* trying to figure out the problem by themselves. Learning how to use *Second Life* was an inevitable process for completing this assignment; however, it was not a primary objective of the assignment. The students were not supposed to be stressing or struggling to deal with hardships in the unfamiliar

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58. WorldofWarcraft.com, Terms of Use Agreement, <http://www.worldofwarcraft.com/legal/termsofuse.html> (last visited Mar. 26, 2008).

59. Secondlife.com, *supra* note 62, § 3.2.

environment of *Second Life*. Outside of the meeting, I assisted students either by email or by meeting upon request. However, students in general seemed to have little trouble traveling around in *Second Life*.

In the second meeting, I monitored the progress of the individual group member's task(s). At this phase, the group had already entered *Second Life* and at least began researching the assigned property topic. This meeting provided the group an opportunity to share questions and problems they experienced in *Second Life*. The style of the meeting was rather casual, and I assisted students individually.

I thought research topics assigned to groups could be divided roughly into three categories: topics that are found both in traditional property and virtual property (overlaps), topics that are not found in virtual property (gaps), and other. Thus, in the second meeting, my approach to the groups slightly varied depending on the subject matter they were researching.

Zoning, landlord-tenant, covenants and eminent domain/regulatory takings are among those I categorized as "overlaps." These concepts either exist or theoretically exist in *Second Life*, and students were challenged to push the conceptual limit of property laws and apply them to the online world. I directed groups in this category to the heart of issues associated with the property topics if we were to apply the concepts in *Second Life*. For example, eminent domain or regulatory takings requires the presence of a government or a regulatory body, and currently, there is no government in *Second Life*. But, can we stretch the concept and treat Linden Lab as a de-facto government? Typically, when a Resident is permanently banned from *Second Life*, the Resident's land will revert back to "Governor Linden" in *Second Life*. Governor Linden is a NPC (non-player character) that is used by different Linden Lab employees.<sup>60</sup> Therefore, ultimately, the land is returned to Linden Lab. By Linden Lab's discretion, land improvements were normally returned to the original owner (creator/copyright owner). Does this practice make Linden Lab a government; and therefore, give existence to the concept of eminent domain or regulatory takings in *Second Life*? Or, is Linden Lab simply exercising a power granted by their online agreement? Is such an online agreement enforceable or unenforceable because of its unconscionability? One group stretched this aspect even further and applied a concept of European feudalism

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60. Linden Lab employees receive "Linden" as their *Second Life* last name.

in *Second Life*, making an argument that Linden Lab could be a feudal king.<sup>61</sup>

On the other hand, adverse possession and finder's rights (lost, mislaid, and abundant property) are among those I categorized as "gaps." These concepts did not exist in *Second Life* because of its "self help" mechanism, and it was crucial that students understood this mechanism in a property context. For groups in this category, I helped them to see how the "self-help" mechanism essentially eliminated the purpose of the property concept they tried to apply. One great example is a concept of lost property in *Second Life*. The concept of losing an object is hard to find in *Second Life* because "code" knows where everything is in *Second Life* and helps objects to be returned to the owner. There are multiple ways that the code accomplishes this, and an automatic-return system is probably the most common method used in *Second Life*. With an automatic-return system, any item placed on land that does not belong to the land owner will be automatically returned to the owner of the item. The returned item is stored in a "lost and found" folder in the owner's inventory. Similarly, one could return an object manually to the true owner by right-clicking the object and selecting "return." Just as seen in the automatic-return, the returned item is stored in the owner's inventory.

Topics such as intellectual property, gambling, and prostitution in *Second Life*, I categorized as "other" since they have more cultural and social elements surrounding them than do topics such as finders or adverse possession; and thus, groups were often challenged to be creative in applying property concepts in the larger social environment.

The groups produced a screencast that was recorded in my office on the following Monday. The screencast consisted of a PowerPoint presentation with graphics and recourses with accompanying narration and reports for each student. What was amazing was the time and effort students consistently put into not only the research, but writing their own "scripts" and creating very visually attractive PowerPoints. These were then posted at Blip TV.

For the most part, we had few problems. The problems we did encounter were of a technical nature. We struggled with where to post the screencasts. The law school did not have a natural place. We experimented with a number of types of sites, until finally a few

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61. David Golfarb, et al., Screencast, Group 13: Eminent Domain, Regulatory Takings, and Feudalism 14.11 min., <http://fizzy.blip.tv/#227573>.

weeks in we settled on Blip TV.<sup>62</sup> Even then, I think we had a few technical problems with a couple of the screencasts, which explains why episodes 10-12 are not posted at the moment. We also found that even though these were First Year law students with brand new laptop computers, their graphics cards did not support *Second Life*, which presented a particular problem. The law school had one computer that we borrowed and left in my office to use. But this was also an impediment that made it difficult for students. Some, in their reports on their work, discussed their frustration and complete abandonment of trying to navigate in *Second Life* because it kept crashing their computers. So, instead, these students opted for research instead of first-hand exploration.

#### IV. SOME OF THE STUDENTS FINDINGS<sup>63</sup>

Virtual worlds are indeed unreal. We mean by this that they are artificial, fictitious, imaginary, intangible, and invented. Yet virtual worlds are real, as well. All things artificial or invented do not fall entirely outside the ambit of reality. If they did, we would need to banish from reality all manner of human actions and creations, including buildings, languages and—most important for our purposes—laws.<sup>64</sup>

—F. Gregory Lastowka and Dan Hunter, *The Laws of Virtual Worlds*

We found no wild animals—the foxes, ducks, and whales of the first days of property, because of course, everything had to be created. There was no such thing as Locke's *America*.<sup>65</sup> But sometimes we found traditional property concepts at work in *Second Life*. For instance, what one could do on one's land resembled the language of property—one could exclude or include other residents and objects, including ejecting avatars (remember the concept of ejectment from property law). Other times, long established property rules were not necessary. And, finally, a completely different system was put in the place of a traditional property system. This section will give a sense of some of the findings from this initial survey.

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62. This was at the suggestion of Tyler Fox at Seattle University School of Law, who also graciously assisted us with this portion of the project.

63. Part IV authored by Elizabeth Townsend Gard.

64. Lastowka & Hunter, *The Laws of Virtual Worlds*, *supra* note 14 at 7 (citations omitted).

65. JOHN LOCKE, TWO TREATISES OF GOVERNMENT, Book II, Ch. V. (1690).

### A. *The Law of Finders Versus Gifts: An Example*

First year students learn the complexities of finders—whether personal property is lost, mislaid, abandoned, or is considered treasure trove—and how that affects ownership.<sup>66</sup> They learn the differences between an item intentionally placed on a table in a restaurant and then accidentally left behind, and one that is dropped on the floor on the way out. We study the differences between public and private spaces. We soon see that a great deal of time and energy in the Anglo-American legal system has been devoted to relativity of title. Group 2 found a very different atmosphere in *Second Life*: it is not possible to lose something. *Second Life* now has an automatic return policy. So, when Jessica<sup>67</sup> tried to “lose” the group’s demo hair, she found it was quickly returned to Fizzy’s inventory.<sup>68</sup> Jessica discussed how *Second Life* handled returning objects before automatic return as well.<sup>69</sup> But, what it tells us, from a property perspective, is that objects always belong to the true owner. The law of finders does not seem to be necessary, at least at the moment, or in a conventional sense.

Gifts, on the other hand, seem to very much follow a traditional property narrative, with one significant caveat. A gift is a “voluntary transfer of property by the owner for no consideration.”<sup>70</sup> Under contemporary property law, a gift requires three elements: intent, delivery and acceptance.<sup>71</sup> Jessica reported that when she gave a gift from her personal avatar to Fizzy, she received an email notice that “Fizzy had accepted my gift . . . completing the real world requirements of intention, delivery, and acceptance.”<sup>72</sup>

Under the law of gifts, delivery of the gift is key.<sup>73</sup> Without delivery, no legal gift has been created. One may have a legal delivery with one of three types of delivery: manual or actual, constructive,

66. Finders concerns personal property. Adverse possession usually concerns real property, although one can have adverse possession of chattels.

67. Jessica Creager, 1LProperty Student, Seattle University School of Law.

68. Laura Lawson & Jessica Creager et. al., Screencast, Group 2: Gifts and Finding 10.39 min (2007), <http://fizzy.blip.tv/#168376>.

69. *Id.* at 11.02 min. She also discussed losing an object within an object, where for instance, a painting disappears within a wall. *Id.* at 12.21 min. Group 2 summarizes the findings: “If you leave or “lose” something, LL automatically stores and returns it to your “Lost and Found” folder (inventory).” *Id.* at 21.40.

70. ROGER BERNHARDT & ANN M. BURKHART, REAL PROPERTY IN A NUTSHELL 11 (5th ed. 2000).

71. *Id.*

72. Lawson & Creager, Screencast, *supra* note 68, at 15.17 min.

73. HERBERT HOVENKAMP & SHELDON F. KURTZ, PRINCIPLES OF PROPERTY LAW 38 (6th ed. 2005).

and symbolic.<sup>74</sup> With actual or manual delivery, the gift is immediately transferred from the donor to the donee with the handing over of the object itself.<sup>75</sup> If manual delivery is impossible "because of the size or weight of the object, or its inaccessibility," donors have two additional options: constructive or symbolic delivery.<sup>76</sup> Constructive delivery involves giving the donee the "means of obtaining possession and control of the gifted property."<sup>77</sup> The traditional example is a key, which gives the donee access to the gift.<sup>78</sup> Symbolic delivery is when a written instrument serves as declaring and signaling the transfer from donor to donee a gift has been made.<sup>79</sup>

From our casebook we learned:

In a famous article, Professor Mechem suggested the following reasons for the survival of the delivery requirement in gifts of personal property:

1. Handing over the object makes vivid and concrete to the donor the significance of the act performed. By feeling the "wrench of delivery," the donor realizes an irrevocable gift has been made.
2. The act is unequivocal evidence of a gift to the actual witnesses of the transactions.
3. Delivery of the object to the donee gives the donee, after the fact, prima facie evidence in favor of the alleged gift.<sup>80</sup>

Jessica explains how she went about giving an object to Fizzy as a gift:

I attempted to follow the directions below and "give" a shirt to Fizzy from my own avatar. It was a virtual "manual delivery" by dragging the object to Fizzy's profile window. Technically, this could qualify as any of the three required deliveries of a gift in real life: the manual delivery in clicking on the object in my inventory, dragging it to Fizzy's profile, and then releasing it to Fizzy; constructive delivery was made because the icon provides access

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74. BERNHARDT & BURKHART, *supra* note 70, at 14-15.

75. *Id.* at 14.

76. DUKEMINIER ET. AL., *supra* note 11, at 157.

77. HOVENKAMP & KURTZ, *supra* note 73, at 38.

78. DUKEMINIER ET. AL., *supra* note 11, at 157.

79. *Id.*

80. *Id.* (quoting Philip Mechem, *Gifts of Chattel and of Choses in Action Evidenced by Commercial Instruments*, 21 ILL. L. REV. 341, 348-349 (1926)).

to the actual code contained within; symbolic delivery because there is an electronic note sent to the donee announcing the gift.<sup>81</sup>

But, Jessica notes that unlike traditional gifts outside of *SL*, when she gave Fizzy a shirt, it was merely a copy of the object and not the actual object itself: "My inventory didn't change when I gave Fizzy the shirt, so I technically gave a copy of the shirt away; hence, both avatars were able to enjoy the shirt simultaneously."<sup>82</sup>

Traditionally under gift law, "the delivery must divest the donor of dominion and control over the property."<sup>83</sup> Does a copy count? I think it does. The copy is the gift. Jessica soon learned, however, that Fizzy's gift received had more limited "rights" to that shirt.<sup>84</sup>

Then I logged in as Fizzy and attempted to give the shirt back to my avatar, from Fizzy's inventory. I was given a screen with a warning: 'You do not have permission to copy this item and will lose it from your inventory if you give it away. Do you really want to offer this item?'"<sup>85</sup>

Jessica had found that the gift receiver received less than the original creator or owner. We had not encountered this with gifts in a traditional property context. We had not had to look at the intellectual property implications of transferring a painting, even if the work was still under copyright. As a property class, we were only concerned with the object, and not the underlying copyright. Here, to transfer the object implicated the intellectual property rights, and made a gift look rather different, even though the process seemed similar to the modern property law of gifts. In another instance, Jessica was given a planter that came with "unlimited use to make copies."<sup>86</sup> She attempted to leave the copy of the planter next to the original planter, and the copy of the planter was "returned to [her] inventory a short while later."<sup>87</sup>

81. Lawson & Creager, Screencast, *supra* note 68, at 13:47 min.

82. *Id.*

83. HOVENKAMP & KURTZ, *supra* note 73, at 38.

84. When creating an object, one has the choice to "[a]llow others to [t]ake, [m]odify, [c]opy, [s]hare, or [p]rohibit[ ] other[ ] avatars in [ ]our '[g]roup' or '[f]riends' list from using [the] object. [The] avatar you seek to share with must 'Accept.'" Lawson & Creager, Screencast, *supra* note 68, at 21:03 min. Note, that Group 2 experimented with Seclimine, "a virtual hypnotic drug developed to make your avatar high and can make the actual user feel high. This is done with hypnotic induction that lasts 15-30 minutes." *Id.* at 20:25 min. Fizzy tried to share the drug, but found that it was only scripted for one user.

85. *Id.* at 14:11 min.

86. *Id.* at 16:07 min.

87. *Id.* at 16:10 min.



Students also found *giving* in a different context—charity events where avatars could donate Linden Dollars to their favorite real-world cause. This included donations for Katrina victims, Relay for Life, and Heifer.<sup>88</sup> Avatars were giving in a virtual space for organizations and causes outside of *Second Life*. One would assume, in this context, that modern property laws governing gifts would apply.

Here we found an example where code has made finders obsolete, but gifts seemed to have adopted traditional property concepts. We even saw modern property (giving to a charity) being enacted in a virtual space. The emergent borrowed from the dominant while at the same time discarding.

### B. *Abandonment and Adverse Possession*

Part of the law of finders concerns the concept of abandonment of personal property, which must be done voluntarily and with intent to release title. But, whereas abandoned property is now available to a finder to take possession and have legal title, it is not so with abandoned property in *Second Life*. “Land that is owned by a valid account is not abandoned even if it appears to be unused. If you are able to find the resident name in Search, there is a good chance that the land is not abandoned.”<sup>89</sup> This relates to adverse possession, which will be discussed shortly. For now, when a resident ceases using land or objects, another resident is not able to claim them as their own. Instead, “[l]and that is abandoned will not be sold directly . . . but will be put up for auction to all SL residents.”<sup>90</sup> It goes back to Linden Lab to auction to the highest bidder, rather than going to the finder of the abandoned property. This is a distinct departure from property law, an abandonment of the dominant legal concept for a new, emergent version.

As with abandonment, we also did not find adverse possession.<sup>91</sup> As one student wrote, “It quickly began [sic] apparent that none of the required elements of adverse possession could be satisfied in *Second Life*. The very mechanics of *Second Life*’s virtual world prevent the key conditions required to adversely possess[] a virtual item.”<sup>92</sup> Here

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88. *Id.* at 19:14 min.

89. Prairie Cloutier, et al., Screenshot, Group 6: Real Estate and Chattel in *Second Life* 22:36 min (2007), <http://fizzy.blip.tv/#180488>.

90. *Id.*

91. Posting of Brandon Rich, Comments on *Second Life* project, to TWEN (Apr. 25, 2007, 19:35 CDT) (on file with author).

92. *Id.* The student wrote about the experience:

is an extended description of one student's work on trying to discover whether adverse possession existed. It demonstrates the kind of applications the students made between traditional property concepts and this new environment.

Adverse possession requires four major elements: actual entry giving exclusive possession; possession which is open and notorious; intent to claim title against the true owner; and possession for a period of time defined by statute or common law. Immediately, this ran into some problems.

Entry onto property is not permitted unless the owner has settings which allow it. This is basically interpreted as implicit permission for anyone who happens to be on the land. As the visitor has no way of accessing these settings, there is no way to claim exclusive possession of the property.<sup>93</sup>

The student also found that there seemed no way to claim title, because in any default situation, the land returned to Linden Lab.<sup>94</sup> Moreover, no government existed and no rules were in place to determine the period of time necessary for open and hostile possession. Even with "ganging" (where avatars swarm land until no one can enter), "a knowledgeable owner can simply shift the settings, and all interlopers will be kicked off the land by the system."<sup>95</sup> Moreover, the avatars were not gaining title to the land by unwelcome occupation.

Another student assigned to Adverse Possession decided to "find some property to try and possess adversely and buy a piece of real estate to defend from other adverse possessors."<sup>96</sup> He set out to adversely possess chattel:

Starting with what would be chattels in the real world, I had already acquired a number of clothing items and accessories so actual possession could be checked off. Hostile possession seemed more difficult, everything I owned had been offered to me for free and because it was dispensed virtually I had no way of knowing if

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As a practical exercise, it was useful to work with the elements of adverse possession to determine if they could be applied in Second Life. Because they were being applied in a virtual world rather than a real one, conceptualizing the difference as they applied legal [sic] was an interesting experience.

93. Posting of Neal Kingsley, There is no adverse possession, to TWEN (Apr. 25, 2007, 12:03 CDT) (on file with author).

94. *Id.*

95. *Id.*

96. Posting of Christopher Cutting, Group 4: My Quest to Possess, to TWEN (Apr. 24, 2007, 19:19 CDT) (on file with author).

I had exclusive possession. To get past this, I tried to take a car off the street, because cars did not seem to be available for free, and found that some cars would let me sit in them, some would not, and I could not drive any of them. These two problems, first with smaller chattels and second with cars, put an end to my adverse possession of chattels hopes.<sup>97</sup>

The question, as an instructor, I came away with from their experiences, then, was if one could overcome the technical access controls, would this parallel “hostile and open.” I would imagine not. Adverse possession traditionally had the utilitarian policy rationale that if an owner had not noticed that someone had occupied the land openly and without permission (hostile) for a period of time designated by the state (10, 15, 20 years), then it was better for society to have the adverse possessor have good title and actually use the land. In this case, if a land went unused, either the player would continue to pay fees, or the land would go into default, and would revert back to Linden Lab. There seems no obvious reason for adverse possession in this tightly (economically and technically) controlled environment. The adverse possession exercise also left me wondering if there *were* instances we had not uncovered—either where a new kind of adverse possession was occurring that looked different. Were we just looking too conventionally at the problem? But, this was beyond our experiment’s scope.

### C. *A Simplified Property Law?*

Like with *finders*, the students found that the structure itself—the technology of the world created by Linden Lab—had removed many of the doubts plaguing property law. Luke Oh posited that *Second Life*’s system of property was much simpler than traditional property law. He used the “tabs” function to explain. A General Tab “[i]ncludes all of the general information about the land, including its Name, Description, Owner name, Group name, etc. Also, in the General Tab is the *For Sale* function, where you can deed and sell your land.”<sup>98</sup> The Options Tab sets “the status of your land and determine what types of behavior will be acceptable or prohibited.”<sup>99</sup> The Access Tab “allows you to limit the access of your land to the group [sic] select on the General Tab and/or up to 50 particular

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97. *Id.*

98. Jaspreet Chowdhary & Luke Oh, Screencast, Group 7: The Property Question 2.45 min (2007), <http://fizzy.blip.tv/#213291>.

99. *Id.*

residents. You can also set the parcel to sell passes and select the amount and time limit for the pass.”<sup>100</sup> The Ban Tab allows one to

restrict access to your land by preventing certain avatars from visiting. Please note that any residents, even those who were added to the ban list, can still fly over your land at a certain height. Be aware that you can also freeze and eject people on your land by right clicking directly on their avatar.<sup>101</sup>

But, I am not so sure that we have found a simplified property regime. I think it may be just some instances where technology changes the need for custom or law—Lessig’s code as law.<sup>102</sup> We found other areas where concepts of property were very much in play. Zoning is one example. “There is no general zoning in SL. You never know what will be built next to you.”<sup>103</sup> The student in this case compared it to Houston.<sup>104</sup> However, established, planned communities have covenants that act as private zoning.<sup>105</sup> These are structured, again, as covenants which are a very basic core concept in property.<sup>106</sup>

#### *D. Other Areas of Property Law*

We had a number of groups that looked into tax issues, even though that was beyond the scope of the assignment for the week.<sup>107</sup> We did not do much on sovereignty, again because this was beyond the scope of our First Year property courses. We also looked at the kind of work available in *Second Life*. Some were companies that serviced needs of *Second Life*, including Electric Sheep Company, and Crayon.<sup>108</sup> Additionally, Reuters had just begun their presence in

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100. *Id.* at 3.43 min.

101. *Id.*

102. See LESSIG, *supra* note 12.

103. Carol Koppelman, Screencast, Group 6: Property Question 2:20 min (2007), <http://fizzy.blip.tv/#213286>.

104. *Id.* at 02.14 min.

105. *Id.*

106. *Id.*

107. Interestingly, this topic came out of the group assigned to “vices” in *Second Life*. Posting of Trevor Osborne, Group 10: Tax Issues, to TWEN (Apr. 25, 2007, 12:46 CDT) (on file with author). See also Posting of Jerphy Lee, Group 10: News in SL, to TWEN (Apr. 25, 2007, 12:38 CDT) (on file with author).

108. Posting of Valerie Ohlstrom, Group 11: Can you find Real Life Work in SL?, to TWEN (Apr. 25, 2007, 11:05 CDT) (on file with author).

*Second Life*.<sup>109</sup> A student also looked at unskilled labor within *Second Life*.<sup>110</sup> Another looked at skilled.<sup>111</sup> Students also looked into the

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109. *Id.* See also Posting of Nick Nilan, Group 11: Second Life Tax Issues, to TWEN (Apr. 23, 2007, 13:58 CDT) (on file with author). Nick's group looked at the nature of work and the economy in *Second Life*. Nick's concept of tax was the abolition of in-world tax:

As for Tax issues in SL, Linden Lab used to impose a property tax on all objects within the game; the bigger and more complex the property, the higher the tax. However, in 2001 some second lifers began protesting Linden's Tax System, drafted a manifesto against "Mad King George Linden" and staged a revolt reminiscent of the Boston Tea Party. Linden Lab responded by making some economic tweaks in the game and later abolishing the property tax. However, Linden currently charges second lifers a land use fee, which is somewhat similar to a property tax, but the fee has not led to any revolts.

He also discussed taxing implication from the real world.

I was able to find many articles on Tax issues due to the great amount of attention SL has recently received due to increased media coverage and the growth of the second life economy. Under Current tax law it is widely understood that people who cash out of virtual economies by converting their assets into real-world currencies are required to report their incomes to the IRS. However, it is not clearly defined how to deal with virtual income and capital gains that never leave the virtual economy. Tax law does not regulate transactions that occur solely inside Second Life or money generated in Second Life that never leaves the game. In October 2006 the Joint Economic Committee of the US Congress began looking into issues related to virtual economies; one of the goals of the study is to determine what is a taxable event in a virtual world. When the study was announced a committee member stated that "the law has fallen behind because you can have a virtual asset and virtual capital gains, but there's no mechanism by which you're taxed. Days later, the chairman of the committee said that it would be a mistake if the IRS introduced regulations to tax transactions that occur in virtual economies and noted that under current law if a transaction takes place solely within a virtual world there is no taxable event. However, others in the tax field disagree and argue that profits that stay in the virtual world and are not realized in real world US\$ are still taxable because there is an exchange of items that have an economic value. They say that In-game trades of valuable virtual property could qualify as barter, and the IRS already taxes barter. They feel that a tax on income generated by the sale and trade of property within virtual economies is simply a matter of time; however, Linden Lab seems not to be concerned about the matter. As of now, there are many people awaiting the results of the Joint Economic Committee study and no matter what the outcome, this will continue to be a highly debated issue.

*Id.*

110. Posting of Emily Carlin, Group 11: Unskilled Work and PPT Organization, to TWEN (Apr. 23, 2007, 13:48 CDT) (on file with author). "Unskilled work isn't particularly lucrative, so not many people bother to write about it. Basically, you can be a dancer, bouncer, shop attendant, or escort/model. Other than those few jobs you really need to have a marketable skill to make money."

111. Posting of Scarlett Hunter, Group 11: Skilled Labor within SL, to TWEN (Apr. 20, 2007, 13:14 CDT) (on file with author):

I began by researching the distinction between skilled labor and unskilled labor within Second Life. Unskilled labor typically is "hobby" labor that doesn't necessarily produce a whole lot of income for the avatar. However, if you are merely a causal player enough pocket lindens to purchase some new clothes or

issue of age-play, Gorean communities and sexual slavery, and prostitution.<sup>112</sup> Students also looked into the economy in *Second Life*.

Students also investigated marriage in SL.<sup>113</sup> We found marriages taking place in *Second Life*. We wanted to know what kind of

dance moves might be sufficient. But if you are in Second Life to make serious money, you will need some real life skills to make that money. These skills can range from using Second Life's building technology to create architecture or new clothes, although it should be noted a lot of causal users create property using SL technology, to a land baron. Some people within in SL have become very successful, however this phenomena appears to be more of the rarity than the norm. Specifically, the people becoming very wealthy within in SL are few and far between, most people make enough to be successful within the game but not necessarily support him in real life. Additionally, it is my opinion that as more real life businesses enter SL to make money, it will become more difficult for individual SL avatars to create wealth within SL.

*Id.*

112. See Posting of Matthew Heyert, Group 12: Questions and Implications, to TWEN (Apr. 22, 2007, 21:15 CDT) (on file with author). Another student wrote:

Focusing on ageplay was probably a mistake, not because there was a lack of information or legal issues, but because it was troubling, unnerving, and some of the material was simply disgusting. There are some images that one really should never see even if it is simply a computer generation. However, the fact that I was so bothered by what was going on (child prostitution) even though there were no actual children involved did show me that the link between SL and the real world was more powerful than I had thought.

Posting of Danielle Walker, Group 12: Ageplay in Second Life, to TWEN (Apr. 20, 2007, 14:59 CDT) (on file with author).

Another student, Ryan Espesgard wrote:

One of my tasks was to research Gorean communities and sexual slavery in Second Life (SL). I knew nothing about my topic when I started my research, and have since found it very interesting. I started by exploring SL with Fizzy, and didn't know what I would find. When I entered the term, "Gorean," into the search field, I received numerous locations to explore. One name in particular caught my eye, the "Camp of Chains." After reading the rules, I realized that Fizzy could be captured and forced into sexual slavery for a period of three days. I didn't want to ruin the opportunity for others in our group to be able to use Fizzy during our week, so I created my own female avatar to send into the fray. In the end, my avatar wasn't captured, but I was shocked at what I saw. I was witness to numerous violent sexual acts and torture. The entire island was filled with points that you could click that would start scripts for any form of sexual torture you could imagine. I continued to explore the sexual side of SL and found that an avatar could really live any human sexual fantasy. I intentionally tried to stump SL by searching numerous sexually deviant activities. All of my searches resulted in finding locations in SL that would cater to these activities. After my experiences in SL, I turned to internet searches to find articles about Gorean communities. This has been an eye opening experience. When I started, I knew that SL had a dark side, but I didn't know the depths to which it went.

Posting of Ryan Espesgard, Group 12: PP Coordinator & Gorean/Sexual Slavery, to TWEN (Apr. 18, 2007, 20:01 CDT) (on file with author).

113. David Baker & Natalya Forbes, et al., Screencast, Group 5: Marriage, Divorce, and Kids (2007), <http://fizzy.blip.tv/#178711>.

property system relating to those marriages was being enacted. According to 1L Student Natalya Forbes:

Specifically, I wanted to find out what kind of marital property system, if any, does a partnership between the two avatars create. As it turned out, in *Second Life*, it is up to the partners to decide how they wish to manage their marital property. However, Lyndon [sic] Lab provides necessary means to allow *Second Life* partners to mimic either common law or community property marital systems.<sup>114</sup>

The group found a profound culture of marriage and getting married. Using the *Second Life Herald* as a resource, Natalya found “pictures of the weddings, invitations to weddings, as well as advertisements for the virtual stores that sell wedding merchandise.”<sup>115</sup>

Another group looked at whether some of the concepts from landlord-tenant property law applied. Jaspreet Chowdhary and Luke Oh found no equivalent of the Fair Housing Act, among other things.<sup>116</sup> They also analyzed the concept of a lease, and whether this existed in *Second Life*. “Landlord-tenant law traditionally rests on a conception that the lease is a conveyance of property and that the tenant has purchased a leasehold estate in the land. To have a landlord-tenant relationship, the landlord must transfer to the tenant the *right to possession* of the premise.”<sup>117</sup> What was exactly happening when a landlord allowed the use of the land in exchange for a periodic payment of rent? How was a landlord-tenant relationship created?

We also explored the concept of public spaces, and found that the ideas behind public and private spaces—the customs, the assumptions were very different from our expectations. As one student noted, he could enter

privately owned homes without any problem. Surprised because if I had attempted to walk into someone’s home in the real world I could have quite possibly woke up in the hospital after being forcibly ejected. However, in *Second Life* users have access to all property unless the owner has taken steps to limit said access.<sup>118</sup>

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114. Posting of Natalya Forbes, Group 5: Marriage, Divorce, Kids, to TWEN (Apr. 24, 2007, 23:40 CDT) (on file with author) (emphasis omitted).

115. *Id.*

116. Chowdhary & Oh, Screencast, *supra* note 98, at 00:15 min.

117. *Id.* at 1:48 min.

118. Posting of Kyle Craigen, Group 9: Public Spaces, to TWEN (Apr. 25, 2007, 12:20 CDT) (on file with author).

*E. Who/what is the government? Is Linden feudal?*

We found also that many of the basic property laws seemed to be in an uncertain state, mostly because we could not determine who constituted the ‘government.’ Was Linden Lab a pseudo-government entity? We ran into this problem again and again. Students were stuck because the government plays an integral part in defining the limits and boundaries of property. Without a clear delineation, many elements become uncertain. One student, Katherine Bond, placed Linden Lab in the role of the government for purposes of regulatory takings.<sup>119</sup> Here is the majority of her post:

A regulatory taking exists when some governmental regulation functions in a way that takes property from the property owner. It is important to remember that the government can take real AND personal property. If a regulation asserts a permanent physical occupation of property, then a regulatory taking has occurred, and the property owner is entitled to just compensation. . .

All *Second Life* users retain their rights under the Terms of Service to their intellectual property. But, their intellectual property is meaningless without *Second Life*, and Linden Lab retains the right to alter, delete, or transfer items at any time for any reason.

In a virtual world, what would a permanent physical occupation of property look like? Would it simply be a computer script executed by Linden Lab that blocked you from parts of your land? Or, would it occur if Linden Lab told you to put something on your land and threatened to delete your account if you refused?

However, if a regulation is a legitimate exercise of the police power, then no taking exists and the property owner is not entitled to just compensation. If you posit that Linden Lab is the ‘government’ of *Second Life*, then the question to ask is what types of regulation would be a legitimate exercise of the police power? Under the terms of service, it seems that any type of regulation would be a legitimate exercise of Linden Lab’s police powers.

Finally, a regulatory taking can occur if the regulation, even though it is a legitimate exercise of police power, goes too far in diminishing the value of the property. Assuming that Linden Lab is the ‘government’ of *Second Life*, can you even go too far if your contract allows broad ‘police powers’? And, what would a diminishment in value of virtual property even look like? These are

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119. Posting of Katharine Bond, Group 13: Reflection on Regulatory Takings in Second Life, to TWEN (Apr. 23, 2007, 21:20 CDT) (on file with author).



questions that might be unable to be answered until there are more virtual worlds.

Our exploration of regulatory takings and eminent domain revealed many things. The first is that, while it may be useful to talk about virtual property and the happenings in *Second Life* utilizing the language of property law, the actual legal framework is more closely aligned to contract law. However, where property law might be particularly useful is in conceptualizing what remedies might look like in disputes that arise within *Second Life* and between users and Linden Lab. Property law also provides a framework for even conceptualizing the virtual products of *Second Life* as things of value deserving of compensation.

The second is that, while the creators of *Second Life* have adamantly asserted that they do not wish Linden Lab to function as a government, the reality of the situation is that Linden Lab has set itself up to be a government. It has done so through the terms of service that set Linden Lab up as 'king.' It has done so through granting users their intellectual property rights in their creations. Despite Linden Lab wanting to be hands-off, they have created a system where it is impossible for them to be so.<sup>120</sup>

The other comment we heard over and over again is that Linden seemed to them—with the limited knowledge of first year property students—to be replicating the relationship in the property casebook version of feudalism. Students, on their own, came back to feudalism in more than one instance. For instance, Neal Kingsley, who was assigned to research whether Adverse Possession existed in *Second Life*, concluded:

While there is a great deal of space devoted to the policies on harassment of other users, Linden Lab appears to have a calculated policy of refusing to implement any sort of regulations which could look like a civil law framework. Hence, no statutory or common law rulings on what amount of time may be necessary to constitute an adverse possession, even if one was able to somehow acquire exclusive control. The notable exceptions to this are the regulations on land ownership and payments. As Linden's business model has shifted to a land-tax income system, the continued financial health of the company appears to require that the company maintain a method of control over each plot of virtual property. It is important to realize that this methodology does not extend down to the supposed "owners" of the virtual land.

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120. *Id.*

Perhaps the best way to look at this is as a late feudal system. Transfers of land are allowed, but the code contains the equivalent of a reversion clause: if proper taxes are not paid, or the account is somehow otherwise suspended, the land will revert to the possession of the seller. This chain continues up the *Second Life* economy until, after a string of defaults, the land returns to the possession of Linden Lab.<sup>121</sup>

Neal's was not the only post that wondered about these kinds of questions. But, they would point out, with feudal duties came feudal responsibilities, and they did not think that Linden understood the relationship they had created, at least as modeled on a very basic concept of feudalism.<sup>122</sup>

#### *F. Back to Basics: Beginning Property Law Cases*

The Dukeminier casebook begins with the quote from Locke, "Thus in the beginning all the world was *America*,"<sup>123</sup> and then juxtaposes this with the *Johnson v. M'Intosh* case where in fact America is, from the initial "discovery," a complex web of made-up European laws confronting indigenous cultures. Students quickly learn that "first possession" may be more complicated than who arrives first, or at least that was true outside of a virtual space.

*Johnson v. McIntosh* made us confront the immediate differences between Locke's *America* and Linden Lab's *Second Life*.<sup>124</sup> Whereas the Europeans had to legally construct the discovery of land, where no Christians had set foot, and then wrestle with what to do with the people they had found in the land they discovered, virtual property presents no such problem.<sup>125</sup> Virtual property—land created by Linden Lab—actually is Locke's *America*, at least in some instances.

121. Posting of Neal Kingsely, *supra* note 93.

122. We were obviously not the first to make such an association. For an interesting perspective on the more general concept of feudalism in cyberspace, see Alfred C. Yen, *Western Frontier or Feudal Society?: Metaphors and Perceptions of Cyberspace*, 17 BERKELEY TECH. L.J. 1207 (2002), where Alfred states that "[t]his Article offers feudal society as a metaphor for the emerging social organization of the Internet. It does so to illustrate how metaphors shape thinking about the Internet and to challenge the sometimes misleading comparison of the Internet to the Western Frontier." *Id.* at 1208. He writes, "Like a feudal king, ICANN grants 'cyberfiefs' to those who promise to pay money and abide by ICANN's rules in exchange for Internet domains." *Id.* at 1240.

123. DUKEMINIER ET AL., *supra* note 11, at 3 (quoting JOHN LOCKE, TWO TREATISES OF GOVERNMENT, BOOK II, CH. V (1690)).

124. See *Johnson v. McIntosh*, 21 U.S. (8 Wheat.) 543, 603 (1823) (stating that Native Americans can occupy but not hold title to land that was discovered by Europeans).

125. See, e.g., Posting of Tasha Madison, *Second Life Through the Lens of First Possession*, on TWEN (Apr. 26, 2007, 13:51 CDT) (on file with author).

Linden creates islands on which one can build whatever one imagines. The power and creation of Locke's *America*, however, had been tightly controlled—there are no untamed wildernesses. *Pierson's* fox hunt had taken place on “upon a certain wild and uninhabited, unpossessed and waste land, called the beach”<sup>126</sup> and the whale in *Ghen* had been killed in the ocean.<sup>127</sup> No such spaces seem to exist in *Second Life*, unless explicitly created.

What students learn from these beginning property law cases include three basic concepts. First, law is as much about power and who is allowed to make-up the laws as it is about who actually holds a particular possession or land. Second, students are taught that property is about relationships between people about things. Third, students learn that property law can be based on custom,<sup>128</sup> ancient laws and traditions,<sup>129</sup> and case law, among other sources of law.<sup>130</sup> We quickly see that property law is much more than merely the land, the cow, or the fox.

*Second Life* does bring some elements of these cases into clearer view. With that in mind, the virtual setting replicates the problems in *Pierson* and *Ghen*. A virtual player hunting a fox might feel slighted if after much time and effort (and exhausting virtually the fox) someone else came in for the kill. Does the killing or custom of pursuit apply? Does it differ from one virtual game to another, from one virtual environment to the next, from one island in *Second Life* to the other? Custom ruled the day in *Ghen*, decided more than eighty years after *Pierson*.<sup>131</sup>

I would suspect the same would hold true for virtual space. This is what many have described as the rules differing depending on the game. The customs and goals of the game change the rules as necessary. *Ghen* described a process of whale hunting that required the whale to be mortally wounded and then float to shore a few days later.<sup>132</sup> Custom had developed for a finder's fee.<sup>133</sup> When that custom was violated (and someone found and sold the whale instead), the courts sided with custom.<sup>134</sup> We saw that this respect for

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126. *Pierson v. Post*, 3. Cai. R. 175 (N.Y. Sup. Ct. 1805).

127. *Ghen v. Rich*, 8 F. 159 (D. Mass. 1881).

128. See *DUKEMINIER ET. AL.*, *supra* note 11, at 19, 25.

129. See *Pierson*, 3. Cai. R. at 177-79.

130. See *Ghen*, 8 F. at 160-62.

131. *Pierson* was decided in 1805, while *Ghen* was decided in 1881.

132. *Ghen*, 8 F. at 159-60.

133. *Id.* at 160.

134. *Id.* at 160, 162.

understanding the workings within a particular culture, industry or virtual island might be necessary in order to determine what laws/rules should be upheld, or in other words, who gets the virtual fox or whale.

So, did we find these kinds of relationships in *Second Life*? We saw customs and traditions. We also saw that each landowner could make its own rules – often posted on a sign as you entered the land. The rules for the land—the laws—varied greatly. We also found that one could use technology to ban or keep out specific avatars or groups from one’s land. In some ways, this seemed a more complete exclusive right than what is traditionally seen (or taught) in property law. The landowner seemed to have complete control, with the caveat of potential intervention from Linden Lab. The structure, again from our limited knowledge of *everything* harkened to our lessons on feudalism more than anything else.

But, our concepts of feudalism were not what feudalism actually was—but how the dominant modern property appropriated as explanations they call feudalism. We see *Williams’s* categories at work. The residual culture applied to explain a portion of dominant culture. Would *Second Life* also adopt the residual culture of feudalism for its explanations? We, at the moment, took our dominant perception of feudalism and placed it on the emergent culture as a means of explanation. But, was this merely because we did not have the tools to envision it as something else, something emerging and still yet defined?

## V. BEYOND FIZZY<sup>135</sup>

Our question was not “what is virtual property” per se. Instead, we wanted to know whether finders, adverse possession, and other basic property concepts existed in a virtual property context, and we choose *Second Life* as the forum in which to explore, in part because *Second Life* was getting so much press attention at the time. In this way, we would be introduced to virtual property by applying our small dataset of information on traditional property concepts.

David Post and others have asked, “how is an avatar to know right from wrong?”<sup>136</sup> This can be interpreted as a legal question, and

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135. Part V, paras. 1-2, authored by Elizabeth Townsend Gard.

136. David G. Post, *Governing Cyberspace*, 43 WAYNE L. REV. 155, 156 (1996), uses Joanna Zakalik’s fictional Maurice, and asks “How are we to know—and perhaps more importantly, how is Maurice to know—whether or not those actions are in any sense wrongful?” In this example, Zakalik and Post were discussing copyright and intellectual property.

when land, clothing, trademarks, boats, hair, and other body parts are the focus of the behavior, concepts of property come into play. Currently the discussion surrounding virtual property categories often focuses on their intellectual property elements—that these islands, t-shirts, trademarks, boats, and body parts are code and are the subject of copyright.<sup>137</sup> But as Scott Boone and others have pointed out, just as a book may be protected by copyright as well as an object of personal property, I wanted the class to look at what was happening in *Second Life* from the premise that indeed these virtual spaces and items were virtual real and personal property.

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Two subsequent events, after we completed the Fizzy Experiment, occurred that brought new thoughts and insight into the experiment for me, one involved a puppy and the other was teaching Property again, this time *without* the inclusion of *Second Life* or concepts of virtual property.<sup>138</sup>

Bobbi Kwall had come to visit at Tulane for the Spring 2008 semester.<sup>139</sup> My family and I picked her up at the New Orleans airport, and in move of amazing foresight, she brought for K., my four-year old daughter, a small present, a *Webkinz* puppy. *Webkinz* is a virtual world targeted at the 4-8 year old crowd. We've been spending time in *Webkinz* for about nine months now—doing jobs, finding jewels, buying clothes, decorating rooms, and of course, playing games to gain more *kinz* cash. It turns out we had the particular stuffed animal, but K. was even more thrilled—she now had twin puppies. We went home and put the individual code from its collar into K.'s *Webkinz* account, choose the sex (girl, of course), and named it Pearl. Our fifth *webkinz* pet was welcomed home, and with it another room to decorate and fill with W-shop products.

A few days latter, K. and I had picked up Bobbi for a short journey around town. She asked K. about the new pet, and then she asked K. if she had any real pets? K. said, "Yes, Pearl and Rose, Lilly, Chu Chu, and Sally. Sally was my first *webkinz*. She's a pony." The conversation disintegrated, with Bobbi asking again, "No, do you have any real pets?" and K. responding, "Yes, Pearl, Rose, Lilly" I

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137. See, e.g., Erez Reuveni, *On Virtual Worlds: Copyright and Contract Law at the Dawn of the Virtual Age*, 82 IND. L.J. 261, 264 (2007); Todd David Marcus, *Fostering Creativity in Virtual Worlds: Easing the Restrictiveness of Copyright for User-Created Content*, 52 N.Y.L. SCH. L. REV. 67 (2007).

138. Authored by Elizabeth Townsend Gard.

139. Roberta Kwall is a prominent IP professor from DePaul University School of Law.

intervened. She means, “Do you have any pets that are not on the computer?” “Oh! My cats are Max and Theo, and Squeeky (guinea pig.)” K. did not understand the distinction of “real.” They are all real to her. We feed Pearl just like we feed Squeeky. And, in fact, she plays more with her virtual pets than she actually interacts with her “real” ones. Virtual pets don’t poop or pee on you when you play, and there is more to do with them—the Wheel of Wow, playing Checkers in a tournament against other pets, and of course, participating in the ever present shopping for games, clothes, and food. Squeeky is much more dull—she mostly squeaks.

K. will have to be taught the difference between her virtual property and her “real property.” But the question we must ask is does K. understand more than we that those differences are merely perceptions, and that those boundaries will fall as more and more of our society is literally raised from birth on virtual worlds? Or perhaps, as K. matures, she will start to see that virtual pet as intellectual property (copyright and the object being distinct, of course, as we saw with the gift of a shirt to Fizzy), and in fact very different from Squeeky?

In the year following the Fizzy Experiment, I also found myself again teaching Property, this time without much virtual property.<sup>140</sup> But, as I teach this course again, I am revisiting the comments from last year’s class and thinking more deeply about the relationship on how we perceive real and personal property in traditional and virtual settings. I’ve come to think of the discussion of virtual property, not merely as the experiment in *Second Life* or playing *Webkinz* at night with my four-year old. It is not searching to see how a virtual table compares to a real-world table. Instead, by thinking about how we should look at virtual property, I find myself challenged in rethinking what constitutes property in the first place.

“Virtual spaces are *not natural kinds*: they can and will be used for many purposes in the future, including not only commerce, but education, therapy, political organization, and artistic expression. Courts and legislatures should keep these differences in mind and avoid one-size-fits-all solutions.”<sup>141</sup> Jack Balkin’s words are a virtual-day version of the lessons we try to instill with the first cases many First Year students encounter. “Property laws are not natural kinds; they can and will be used for many purposes in the future. . . .”<sup>142</sup>

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140. We have a different theme this year.

141. Balkin, *supra* note 1, at 80.

142. *See id.*

Even without the addition of virtual property, my 1L property class is *not* the 1L property class my father took.<sup>143</sup> A 1L at U.C. Hastings in the early 1960s, his class focused on real property, with a second elective in personal property. Many of today's property courses recognize not only real and personal property, but also incorporate intellectual property as part of the 1L student's exposure to "What is Property?"

Moreover, the kinds of questions, at least the ones the Dukeminier casebook asks of students, are not very far off from questions of virtual property. For instance, the students are exposed to the questions and concepts of what constitutes property—can body parts be property?<sup>144</sup> How does the property element change when the spleen is inside Moore's body? Outside Moore's body? What is the public policy behind *dis*-allowing Moore a property right in his own waste or body parts (so that Moore would have a claim of conversion)? The students are forced early to see property as complicated (more than merely land), and full of policy concerns, competing legal justifications and reasonings (treaties, custom, practicalities, constitutional concerns). The introduction to property does not end there. Students, at least in this casebook,<sup>145</sup> are introduced to the *INS* case,<sup>146</sup> *Chakrabarty*,<sup>147</sup> the *Nichols* case,<sup>148</sup> Kozinski's dissent in the Vanna White right of publicity case,<sup>149</sup> and even *Grokster*.<sup>150</sup>

These cases are indicating to 1L students that the concept of property is broad, with specific rules in specific circumstances. Property rights extend far into wide-patented bacteria and robots that conjure up Vanna White. My argument is that within this context, there is a place for discussing "What is virtual property, and is it distinct or does it fit within the larger context of what is property?" In fact, a virtual world like *Second Life* might be a place where students

143. My father, Robert Townsend, graduated from Hastings in 1963.

144. See *Moore v. Regents of the Univ. of Cal.*, 793 P.2d 479, 487 (Cal. 1990).

145. *DUKEMINIER ET. AL.*, *supra* note 11.

146. *Int'l News Serv. v. Associated Press*, 248 U.S. 215 (1918) *reprinted in* *DUKEMINIER ET. AL.*, *supra* note 11, at 51.

147. *Diamond v. Chakrabarty*, 447 U.S. 303 (1980) *reprinted in* *DUKEMINIER ET. AL.*, *supra* note 11, at 60.

148. *Nichols v. Universal Pictures Corp.*, 45 F.2d 119 (2d. Cir. 1930) *reprinted in* *DUKEMINIER ET. AL.*, *supra* note 11, at 59.

149. *White v. Samsung Elecs. Am., Inc.*, 989 F.2d 1512 (9th Cir. 1993) (Kozinski, J., dissenting) *reprinted in* *DUKEMINIER ET. AL.*, *supra* note 11, at 62.

150. *MGM Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005) *reprinted in* *DUKEMINIER ET. AL.*, *supra* note 11, at 65.

are required to piece together all of their knowledge of these seemingly disparate parts of property.

In placing virtual property within the larger menu of types of property, something like Benkler's *Matrix* spoon<sup>151</sup> becomes a metaphor not only for virtual property, but potentially for real and personal property as well. In "There is No Spoon," Yochai Benkler is alluding to the scene from *The Matrix* when Neo comes to understand that the secret to bending a spoon is that in fact there is no spoon: "Do not try and bend the spoon. That's impossible. Only try to realize the truth" "What truth?" "There is no spoon."<sup>152</sup> Benkler asks the question, "Who should own this spoon, the provider or the user?" The answer is: "*there is no spoon.*"<sup>153</sup> It was his conclusion that got me:

There is no spoon. There are only social relations mediated by richly rendered communications platforms. The question of "who should own this spoon?" should be understood as a question about what we want the social relations using the platform to be like. That question requires that we define a range of social relations that we believe the platform will enable, and a normative belief about how those relations should go. The rest is lawyering—constructing the detailed institutional structure within which these social relations will then be played out.<sup>154</sup>

Regardless of whether virtual property is a subset or distinct from real/personal property, Benkler's words very much apply to what 1L property students are supposed to be learning about first possession, subsequent possession, covenants, zoning, regulatory takings, etc.

And so, this semester the property course focused in part on people as property, something far removed from virtual property, or so I thought. First we looked at body parts<sup>155</sup> and then at right of publicity.<sup>156</sup> Then, we turned to slavery—first bioslavery<sup>157</sup> and then at slavery in the U.S, both in a historical context as well as human trafficking. For us, the question was always what is property – how is

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151. Yochai Benkler, *There is No Spoon*, in *THE STATE OF PLAY: LAW, GAMES, AND VIRTUAL WORLDS* 180 (Jack Balkin & Beth Simone Noveck eds., 2006).

152. *THE MATRIX* (Warner Bros. Studios and Australian Village Roadshow Pictures 1999).

153. Benkler, *supra* note 151, at 180.

154. *Id.* at 186.

155. *Moore v. Regents of the Univ. of Cal.*, 793 P.2d 479 (Cal. 1990).

156. *White v. Samsung Elecs. Am., Inc.*, 989 F.2d 1512 (9th Cir. 1993) (Kozinski, J., dissenting).

157. *See Diamond v. Chakrabarty*, 447 U.S. 303 (1980).



property being defined? The *Amistad* case served as our quick way into the concept that treaty law determined whether bodies were property or kidnapped persons.<sup>158</sup> We saw the connections to *Johnson v. McIntosh*,<sup>159</sup> to foxes, ducks, and whales, to patented-bacteria and body parts. Law constructs the boundaries, and these boundaries shift, both temporally and within a spacio-social context. We ended our discussion of people as property briefly with the corporation (an idea, stocks, a physical place, *property*) becoming a legal person. In that context, we see a fiction (a corporation) being treated as a person, and people being treated as chattel. Here is where it gets interesting. In 2004, Edward Castronova in "The Right to Play," equated the fictional creation of the corporation as an avenue to creating the law of interration.<sup>160</sup> The abstract to his article explains that the law of interration:

Parallel to the law of incorporation, that instantiates and, more importantly, protects the fantasy environments we create. They need protection because the encroachments of daily life - taxes, regulations, torts - will surely drain them of any sense of Otherness. And without the sense of Otherness, synthetic worlds will have lost a great deal of what makes them precious and valuable to us.<sup>161</sup>

The boundaries are ever-shifting as to what counts as property, what counts as a person, or even what counts at all.

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Throughout the Fizzy Experiment, I repeatedly reminded the students to be cautious when they use any term that has "virtual" attached to it. It is simply because we are not clear as to what the term virtual represents legally.<sup>162</sup> For example, what does "virtual" property really mean? When two people talk about "virtual" property issues, are they using the term in the same context? Whose definition of "virtual" property should prevail?

After spending several months studying ownership concepts in *Second Life* in the Fizzy Experiment, and working as a legal intern at Linden Lab for the summer of 2007, I am reassured of the importance

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158. United States v. *Amistad*, 40 U.S. 518 (1841).

159. *Johnson v. McIntosh*, 21 U.S. 543 (1823).

160. Edward Castronova, *The Right to Play*, 49 N.Y.L. SCH. L. REV. 185 (2004).

161. Edward Castronova, Abstract, The Right to Play, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=733486](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=733486) (unpublished abstract).

162. Authored by Rachel Goda.

of the virtual world industry “definition building” process. In *Bragg v. Linden Research, Inc.*, the plaintiff asserted that virtual worlds such as *Second Life* are similar to theme parks such as Disney World in which shops selling merchandise and a variety of transactions are independent of entrance to the park itself.<sup>163</sup> Furthermore, the plaintiff claimed that “unlike Disney World . . . Linden has been in the business of selling the land inside the “theme park.” Thus, Linden no longer owns the very world they created, instead choosing to sell the world/land to consumers.”<sup>164</sup> Therefore, the plaintiff described the Linden Lab’s act of banning a play from *Second Life* as follows:

Thus, not only did Defendants “eject” Bragg from their “Disney World,” but before doing so, they *confiscated* all the goods he had purchased at the stores, refused to refund his money for the purchases, re-listed the purchased goods for re-sale, resold the goods to third parties, did not provide the proceeds to Bragg (keeping it for themselves) and – to top it off – simply took his other possessions as well as his wallet (with all his U.S. currency in it) that Bragg had, evidently, made the serious mistake of bringing into the “park” with him.<sup>165</sup>

As opposed to the plaintiff’s interpretation of ownership rights in *Second Life*, Linden Lab describes *Second Life* users rights to “virtual land” in *Second Life* as “a license of access to Linden’s proprietary servers, storage space, bandwidth, memory allocation and computational resources of the server, which enables the experience of “land” and the things that one can do with “virtual land” on the *Second Life* platform.”<sup>166</sup> And, thus, Linden Lab denies that “Linden no longer owns the very world they [sic] created.”<sup>167</sup>

What caused this great discrepancy in the perceptions of ownership rights in *Second Life* among parties? Did Linden Lab misleadingly market *Second Life* in the way that the users would believe they owned such property as Marc Bragg<sup>168</sup> did? Or, is this merely an issue concerning the interpretation of ambiguous

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163. Plaintiff’s Complaint in Civil Action at 4, *Bragg v. Linden Research, Inc.*, 487 F. Supp 2d 593 (E.D. Pa 2007) (No. 06-cv-04295).

164. *Id.* at 4.

165. *Id.* at 23 (emphasis added).

166. Defendants Linden Research, Inc. and Philip Rosedale’s Answer to Complaint at 5, *Bragg v. Linden Research, Inc.*, 487 F. Supp. 2d 593 (E.D. Pa. 2007) (No. 06-cv-04295). Shops selling merchandise exist and a variety of transactions occur inside the virtual world just like such shops and transactions occur inside Disney World, independent of entrance to the park itself. *Id.* at 4-5.

167. *Id.* (alteration in original).

168. Plaintiff in *Bragg v. Linden Research, Inc.*, 487 F. Supp. 2d 593.

contractual language considering *Second Life* being contract based? It is often said that the Bragg case is about whether virtual property ownership exists. But, this case reminds me of a 1L contract case, *Frigalment Importing Co., Ltd. v. B.N.S. International Sales Corp.*,<sup>169</sup> in which a buyer of fresh frozen chicken, alleging that the term “chicken” in the contract referred young chicken suitable for broiling and frying, sued the seller for breach of warranty for delivering older stewing chickens.<sup>170</sup> The Circuit Judge Friendly begins his opinion with the famous statement, “The issue is, what is chicken?”<sup>171</sup> In dismissing the plaintiff’s claim, the judge states the following:

Plaintiff says “chicken” means a young chicken, suitable for broiling and frying. Defendant says “chicken” means any bird of that genus that meets contract specifications on weight and quality, including what it calls “stewing chicken” and plaintiff pejoratively terms “fowl.” Dictionaries give both meanings, as well as some others not relevant here. To support its, plaintiff sends a number of volleys over the net; defendant essays to return them and adds a few serves of its own. Assuming that both parties were acting in good faith, the case nicely illustrates Holmes’ remark “that the making of a contract depends not on the agreement of two minds in one intention, but on the agreement of two sets of external signs—*not on the parties’ having meant the same thing but on their having said the same thing.*”<sup>172</sup>

The case from 1960 teaches us an important lesson to dealing with a cutting edge virtual property dispute. “The issue is, ‘what is virtual property?’” I believe we need to start building industry consensus as to what “virtual property” represents in 3-D platforms.

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And so we learned great deal. We think some of the students did too (because they wrote comments to us to that affect).<sup>173</sup> We’ve started now to see the questions that virtual property makes us ask applicable to real and personal property. We continue to be curious about the feudal nature of Linden—could this be an example of a reluctant postmodern accidental feudal king? And, finally, we see the shortcomings of our Fizzy Experiment. We were looking at an open market-driven world. We think it would be interesting to see how

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169. *Frigalment Importing Co., Ltd. v. B.N.S. Int’l Sales Corp.*, 190 F. Supp. 116 (S.D.N.Y. 1960).

170. *Id.* at 117.

171. *Id.*

172. *Id.* (citation omitted) (emphasis added).

173. Paragraph is authored by both Elizabeth Townsend Gard and Rachel Goda.

property operates in closed worlds like *Webkinz*. As many have noted, different rules and laws might be necessary in the two kinds of virtual spaces.<sup>174</sup>

The Fizzy Experiment has successfully accomplished demonstrating that the traditional property concepts do sometimes apply to a virtual space.<sup>175</sup> The law of gifts, of course, is a good example. But many times, traditional property concepts do not fit in the virtual world context due to the “self-help” mechanism and the contractual restrictions such as the ownership rights recognized under TOS are intellectual property rights but not personal or real property rights. At the same time, the experiment showed that there are delicate cultural and social factors that are intricately weaved into the issue of ownership rights in the virtual world, which resembled the interplay of law, custom and society’s needs, as well as a basic concept of the European feudal society where a concept of real property was based. We think we saw the battle of the residual, dominant and emergent cultures at work at the moment of the Spring of 2007. In the next paper, we would like to explore how disparate property characteristics can be merged into one, or co-exist creating an industry consensus as to what “virtual property” indicates. It would require for us, of course, to return to the root of property laws and the philosophy behind them, which would include the relationship to property theories with concepts of intellectual property.

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174. The question of open versus closed worlds has been addressed recently by a number of scholars including Edward Castronova, *The Right to Play*, 49 N.Y.L. SCH. L. REV. 185 (2004). Castronova discusses reasons for differentiating open/closed and laws of interration as the virtual world corollary to incorporation. Castronova’s version basically is an opt out of real world law – you can be fully subject to outside law and regulation (taxation, property, etc) or interrate and abide by strict rules regarding commodification and other concerns. *See also* Jack M. Balkin, *Virtual Liberty: Freedom to Design and Play in Virtual Worlds*, 90 VA. L. REV. 2043 (2004). Balkin would have multiple forms of interration, each with their own bundle of rights and responsibilities. Commodified worlds must protect property rights, provide public spaces for free expression. Non-commodified worlds give creators greater leeway in regulating player’s speech, no rights in items, emphasis on protecting the “story” of the world, etc. *See also* Jason S. Zack, *The Ultimate Company Town: Wading in the Digital Marsh of Second Life*, 10 U. PA. J. CONST. L. 225 (2007).

175. Authored by Rachel Goda.

## APPENDIX I

THE *SECOND LIFE* FIZZY EXPERIMENT (AS PRESENTED TO THE CLASS)

We are about to set out on a journey, an experiment, an adventure. We, as part of our class this spring 2007 semester will enter *Second Life*, the virtual world that is currently the rage. We are part explorers, part journalists. The goal is to take the concepts we are learning in our property course, and see how the traditional, modern conventions of property are manifesting themselves in a virtual world.

This will be part of a larger project I am currently engaged, and is an attempt to blend research and teaching. We will be producing screencasts and written reports on what we find that will be posted to a website for both our class as well as a larger audience. We will have virtual guests to our class, and Rachel Goda and I will be reporting our findings in a number of venues this spring.

Overall exercise: Working in groups, we are going to explore *Second Life* in general, and more specifically, look at how much modern concepts of property are being imported into a virtual property environment. We will do this by concentrating on four activities with each group: 1) a property question; 2) avatar maintenance; 3) Experiencing *Second Life* through tourism and event attendance, and 3) keeping up on news about *Second Life*.

Time Commitment: to make sure that this project does not overwhelm our course, we will have a strict time commitment, both inside and outside of class. For each group, all of the work takes place in a one week time period. You will be required to meet four times with supervision/guidance during the assigned week. You will also record a ten minute group screencast presentation. You will also have a one-page writing component.

Money: You will be given set amount of \$US for the week to spend as group. Each week, the amount varies, and is part of our experiment. What is your experience like with \$1 versus \$20?

Groups: You may sign up to any group topic you wish. The list of topics will be available on TWEN. Each week will have a different theme, activity, etc. The groups will be made up of 6-8 students.

Work: The group will prepare about a ten minute PowerPoint screencast presentation on the questions and findings of the week (including also any relevant news about *Second Life* that week). [Note: in reality, the screencasts have generally been 20 minutes] This will be filmed outside of class in my office on. The presentation will be screencasted and made available for viewing. Make sure to include

a “Credits” page in your PowerPoint presentation. You will record the screencast in my office (a week after you begin your work). This will give us the option of either viewing the screencast in class or assigning it as part of homework in order to give us more time for discussion. It will also allow others outside the class to view our progress throughout the semester.

Each student will be required to do a one-page written report on their experiences and their contribution to the project. These will be posted as part of the project to the TWEN site.

### Grading

Each member must work on a disparate part of the week’s work, as well as with the group. The group must turn in a report on each person’s activities and how the group worked as a whole. You will be graded both on your individual contribution as well as you willingness to work and play well with others.

Group Required Activities:

- \* Property Question
- \* Avatar Maintenance
- \* Exploration of SL
- \* SL News (both inside SL and outside)

### Individually Assigned Tasks

You may divide up the workload in anyway the group sees fit. Here is a list of tasks. Make sure to have a “Credits” slide at the end of the PowerPoint Presentation so that I know who did what.

\* Tour guide (3-4 places relevant to the property theme of the week in SL)

- \* Avatar Maintenance (alter the avatar each week)
- \* News reporter (both gathering and reporting for the week)
- \* Property Question Research—Framing the Question
- \* Property Question Research in SL
- \* PowerPoint presentation design and group leader/coordinator

### Weekly Schedule

Monday: Basics with Rachel (1 hour)

Wednesday: Property Project with Rachel (1 hour)

Friday: Time with Elizabeth to report progress (1 hour)

Monday: Record screencast in Elizabeth’s office

*Second Life* Schedule (Topics list)

Below is a list of topics you may sign-up for on TWEN. Alongside the topic is the amount of money the group will be allotted for the week to spend within *Second Life*. Note: the amount is in U.S. dollars, rather than in Linden currency.

Group One: The Rules of the World (what laws control and how) (\$10)

Group Two: Gifts and Finders (\$5)

Group Three: First in Time (Rule of Capture, Rule of Discovery, Rule of Conquest, etc.) (\$0)

Group Four: Adverse Possession (\$10)

Group Five: Marriage, Divorce, Kids (in a property law context) (\$10)

Group Six: Real Estate versus Chattel in SL (\$30)

Group Seven: Landlord-Tenant (\$10)

Group Eight: IP Issues: Trademarks, Patents, Right of Publicity, and Copyrights in SL (\$20)

Group Nine: Public Spaces, Zoning and Nuisances (\$5)

Group Ten: Nightlife and Gambling (\$20)

Group Eleven: SL Economy and the Nature of Work (\$1)

Group Twelve: Prostitution and the Sex Industry in *Second Life* (\$10)

Group Thirteen: Linden Lab as Post-Feudalism? (Also look at Eminent Domain and Regulatory Takings) (\$5)